

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PATRICK TRACY,

Plaintiff,

-v.-

5:01-CV-0500
(NPM/GHL)

PATRICK J. FRESHWATER; TOMPKINS
COUNTY, Tompkins County Sheriff's Department;
and PETER MESKILL, Tompkins County Sheriff,

Defendants.

APPEARANCES:

OF COUNSEL:

PATRICK TRACY

06499-028

Terre Haute Camp

P.O. Box 33

Terre Haute, IN 47808

Plaintiff, *pro se*

JONATHAN WOOD

JONATHAN WOOD, Esq.

County Attorney, Tompkins County

125 East Court Street

Tompkins County Office Building

Ithaca, NY 14850

Attorney for Defendants

NEAL P. MCCURN, SR. J.

DECISION and ORDER

Plaintiff Patrick Tracy commenced this action by filing a Complaint on April 6, 2001. Dkt. No.

1. In a Report-Recommendation filed on July 11, 2007, United States Magistrate Judge George H. Lowe recommended that summary judgment be granted in favor of defendants. Dkt. No. 165. By Order of the Court filed July 31, 2007,¹ the Report-Recommendation was accepted in its entirety and plaintiff's complaint was dismissed. Dkt. No. 167. Judgment was entered in favor of defendants on

¹ By Order dated March 28, 2008, this case, previously assigned to Senior Judge Howard G. Munson, was reassigned to Senior Judge Neal P. McCurn. *See* Dkt. No. 176.

July 31, 2007. Dkt. No. 168. On August 20, 2007, plaintiff filed a motion for reconsideration of the Order granting summary judgment for the defendants. Dkt. No. 169. The motion was denied by Memorandum Decision and Order filed on March 28, 2008. Dkt. No. 177. Plaintiff has appealed from the March 28, 2008 Memorandum Decision and Order to the Second Circuit Court of Appeals. Dkt. No. 178. Presently before the Court is plaintiff's request to proceed *in forma pauperis* during the appeal of this case. Dkt. No. 182.

In determining plaintiff's application for *in forma pauperis* status for purposes of appeal, the Court must determine not only whether he has demonstrated sufficient economic need, but must also consider the sufficiency of the appeal. Even if a plaintiff can demonstrate that he is indigent, the plaintiff has no absolute right to appeal *in forma pauperis*. His right to appeal is conditioned by 28 U.S.C. § 1915(a)(3), which provides that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith."²

When screening appeals pursuant to 28 U.S.C. Section, the Court must apply an objective good faith standard. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Good faith is shown when the petitioner "seeks appellate review of any issue not frivolous." *Id.* See also *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir.2000) (appeal is not taken in good faith when reasonable person could not suppose that the appeal has merit); *Rhodes v. Corps of Eng'rs of U.S. Army*, 589 F.2d 358, 360 (8th Cir.1978) (appeal must present a substantial question worthy of consideration); *Parsell v. United States*, 218 F.2d 232, 235 (5th Cir.1955) ("an appeal in forma pauperis should not, indeed may not, be allowed where it is plainly without merit.").

Ex parte Chayoon, No. 6:06-CV-1812, 2007 WL 1099088, at *1 (M.D.Fla. Apr. 10, 2007).

In light of the foregoing, and after due consideration of the record in this action, the Court finds

² Pursuant to 28 U.S.C. § 1915, the District Courts are also required to conduct an initial screening of civil complaints filed *in forma pauperis*. The District Court is authorized to dismiss the case if it "determines that ... the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B).

that the appeal is frivolous and hereby certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915 (a)(3). Accordingly, plaintiff's application to proceed with his appeal *in forma pauperis* is denied.

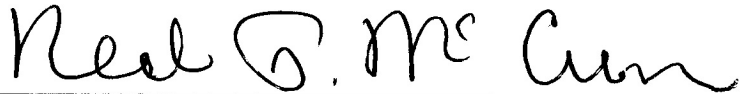
WHEREFORE, it is hereby

ORDERED, that the application filed by plaintiff for leave to proceed with his appeal in this matter *in forma pauperis* (Dkt. No. 182) is **denied**, and it is further

ORDERED, that the Clerk serve a copy of this Decision and Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: May 2, 2008
Syracuse, New York

A handwritten signature in black ink, reading "Neal P. McCurn". The signature is written in a cursive, flowing style. The first name "Neal" is written in a larger, more prominent script, followed by "P." and "McCurn". The signature is positioned above a horizontal line.

Neal P. McCurn
Senior U.S. District Judge